

SHELLFISH MANAGEMENT ORDINANCE  
TOWN OF ELIOT

1. Authority: This Ordinance is prepared in accordance with 12 M.R.S.A. Section 6671.
2. Purpose: To establish a shellfish management program for the Town of Eliot which will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:
  - A. Licensing.
  - B. Limiting the number of shellfish harvesters.
  - C. Restricting the time and area where digging is permitted.
  - D. Limiting the minimum size of clams taken.
  - E. Limiting the amount of clams taken daily by a harvester.
3. Shellfish Management Committee: The Shellfish Management Program for the Town of Eliot will be administered by the Shellfish Management Committee consisting of seven (7) members and two (2) alternates to be appointed by Selectmen for terms of three year(s). Terms shall be staggered so that the continuity of membership and knowledge is assured.

The Committee's responsibilities include:

- A. Establishing annually in conjunction with the State Department of Marine Resources (DMR) the number of shellfish digging licenses to be issued.
  - B. Surveying each clam producing area at least once each three years to establish clam size, distribution, and density; and annually estimating the status of the Town's shellfish resources.
  - C. Submitting to the Board of Selectmen proposals for the expenditures of funds for the purpose of Clam Management.
  - D. Keeping this Ordinance under review and making recommendations for its amendments.
  - E. Securing and maintaining records of shellfish harvest from the Town's managed shellfish areas, as well as closed areas that are conditionally opened by the State DMR.
  - F. Recommending to the Board of Selectmen conservation closures and openings of clam growing areas in conjunction with the Area Biologists of the State DMR.
  - G. Submitting an annual report to the Municipality and the State DMR covering the above topics and all other committee activities.
  - H. To meet each month as shall be required to fulfill the objectives of this Ordinance.
4. Definitions:

- A. Resident: The term “resident” refers to a person who has been domiciled in this municipality for at least three months next prior to the time his claim of such residence is made.
  - B. Nonresident: The term “nonresident” means anyone not qualified as a resident under this Ordinance.
  - C. Shellfish, Clams and Intertidal Shellfish Resources: When used in the context of this Ordinance, the words “shellfish”, “clams”, and “intertidal shellfish resources” mean soft-shell clams (*Mya arenaria*).
  - D. Municipality: Refers to Town of Eliot, Maine.
5. Licensing: A Municipal Shellfish Digging License is required. It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this Ordinance. A Commercial Digger must also have a valid State of Maine Commercial Shellfish License issued by the State DMR.
- A. Designation, Scope and Qualifications:
    - 1) Resident Commercial Shellfish License: The license is available to residents and real estate taxpayers of the Town of Eliot and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.
    - 2) Nonresident Commercial Shellfish License: The license is available to nonresidents of the Town of Eliot and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.
    - 3) Residential Recreational Shellfish License: The license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of the licensee and his/her family and may not be sold for profit or trade.
    - 4) Nonresident Recreational Shellfish License: The license is available to any person not a resident of this municipality and entitles the holder to dig and take not more than one peck of shellfish in any one day for the use of the licensee and his/her family and may not be sold for profit or trade.
    - 5) License must be signed: The licensee must sign the license to make it valid.
  - B. Application Procedure: Any person may apply to the Town clerk for the licenses required by this Ordinance on forms provided by the municipality.
    - 1) Contents of Application: The application must be in the form of an affidavit and must contain the applicant’s name, current address, birth date, height, weight, signature and whatever information the municipality may require.
    - 2) Misrepresentation: Any person who gives false information on a license application will cause said license to become invalid and void.
  - C. Fees: The fees for the licenses are as stated below and must accompany in full the application for the respective license. Fees received for shellfish licensing shall be used by the Town for

shellfish management, conservation and enforcement. All fees collected shall be used for the implementation of the Ordinance.

Resident Commercial:	\$200.00
Nonresident Commercial:	\$400.00
Resident Recreational:	\$ 15.00
Nonresident Recreational:	\$ 30.00

- D. Limitation of Diggers: Clam resources vary in density and size distribution from year to year and over the limited soft clam producing area of the Town. It is essential that the Town carefully husband its shellfish resources. Following the annual review of the Town's clam resources, its size, distribution, abundance, and the Warden's reports, as required by Section 3, the Shellfish Management Committee, in consultation with the State DMR area biologist will determine whether limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year, and will determine what other management tools are appropriate and beneficial.
- 1) Prior to February 15<sup>th</sup>, the committee shall report its findings and make recommendations to the Commissioner of Marine Resources for the allocation of commercial and recreational licenses to be made available for the following license-year.
  - 2) After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to April 1<sup>st</sup>, the Shellfish Management Committee shall notify the Town Clerk in writing of the number and allocation of Shellfish Licenses to be issued.
  - 3) The Clam Management Committee shall cause notice of the number of licenses to be issued and the procedure for application to be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching persons affected. This notice shall be published and posted not less than 10 days prior to the period of issuance. The notice shall remain posted in the municipal offices until the period concludes.
  - 4) The Town Clerk shall issue licenses to residents and nonresidents as allocated (paragraph 2) on a first-come, first-served basis from May 1<sup>st</sup> and until July 1<sup>st</sup> after which licenses shall be issued to residents and nonresidents on a first-come, first-served basis.
  - 5) Licenses may be returned to the Town voluntarily, and reissued to another person at the current fee according to the priorities established in this section.
- E. License Expiration Date: Each license issued under authority of this Ordinance expires at midnight on the 30<sup>th</sup> day of April next following date of issuance.
- F. Reciprocal Harvesting Privileges: Licenses from any other municipality cooperating with this municipality on a joint shellfish management program may harvest shellfish according to the terms of this license.
- G. Suspension: Any shellfish licensee receiving more than one conviction during a three year period for a violation of this ordinance shall have their shellfish license automatically suspended for a period of three hundred and sixty five days.
- 1) A licensee whose shellfish license has been suspended pursuant to this ordinance may reapply for a license only after the suspension period has expired.

- 2) The suspension shall be effective from the date of mailing of a Notice of Suspension by the Town Clerk to the Licensee.
  - 3) Any licensee whose Shellfish License has automatically been suspended pursuant to this section shall be entitled to a hearing before the Shellfish Management Committee upon the filing of a written Request for Hearing with the Town Clerk within thirty (30) days following the effective date of suspension. The licensee may appeal the decision of the Shellfish Management Committee before the Board of Selectmen/Town Council by filing a written Request for Appeal with the Town Clerk within seven (7) days of the decision of the Shellfish Management Committee.
6. Opening and Closing of Flats: The Municipal Officers, upon the approval of the Commissioner of Maine Resources, may open and close areas for shellfish harvest. Upon recommendations of the Shellfish Management Committee and concurrence of the DMR area biologist that the status of shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Municipal Officers may call a Public Hearing to determine if the opening or closure is consistent with good management practices, and shall send a copy of the notice to the DMR. The decision of the Municipal Officers made after the hearing shall be based on findings of fact.
7. Minimum Legal Size of Soft Shell Clams: It is unlawful for any person to possess soft-shell clams within the Town of Eliot, County of York, which are less than two (2) inches in the longest diameter except as provided by Subsection B of this section.
- A. Definitions:
    - 1) Lot: The word "lot" as used in this ordinance means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel, or other container, the contents of each box, barrel, or other container constitutes a separate lot.
    - 2) Possess: For the purpose of this section, "possess" means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam shellstock.
  - B. Tolerance: Any person may possess soft shell clams that are less than two inches if they comprise less than 10% of any lot. The tolerance shall be determined by numerical count of not less than one peck nor more than four pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one peck.
  - C. Penalty: Whoever violates any provision of this section shall be penalized as provided by 12 MRSA Section 6681 and 6671 (10).
8. Municipal Shellfish Conservation Warden:
- A. Appointment: The Board of Selectmen shall appoint a municipal shellfish conservation warden who shall be empowered with other State, county and municipal enforcement officers to enforce the provisions of this ordinance, and shall have the authority authorized in 12 MRSA 6671 (8).
  - B. Term: The term of the municipal shellfish conservation warden shall be three years. A warden may serve more than one term. The warden may be removed by the Board of Selectmen, after notice and hearing.
  - C. Compensation: The compensation of the municipal shellfish warden shall be determined and set by the Board of Selectmen.

9. Effective Date: This ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the municipality provided a certified copy of the ordinance is filed with the Commissioner within twenty (20) days of its adoption.
10. Period of Ordinance: This ordinance shall remain in effect until repealed. This ordinance may from time to time be amended, changed or repealed by request of the Clam Committee or by petition of any individual or group. If a petition signed by a number of voters equal to at least 10% of the number of votes cast in the Town in the last gubernatorial election, the Board of Selectmen shall hold a public hearing. Following said public hearing the Board of Selectmen may take action on said amendment.
- If a number of voters less than 10% of the number of voters that voted in the last gubernatorial election wish to amend, change or repeal this ordinance, said petition shall be referred to the Clam Committee for report and recommendation at least 90 days prior to any town meeting held to do the same. The Clam Committee may make changes to the proposed amendment. If the Clam Committee concurs with the proposed change the petition shall be forwarded to the Board of Selectmen who shall hold a public hearing on any proposed amendment. Following said public hearing the Board of Selectmen may take action on said amendment.
11. Separability: If any section, subsection, sentence or part of this ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this ordinance.
12. Repeal: Any ordinance regulating the harvesting or conservation of shellfish in the Town and any provisions of any other Town Ordinance, which is inconsistent with this ordinance, is hereby repealed.

TO: Wendy J. Rawski, Town Clerk  
Town of Eliot  
Eliot, Maine 03903

We, the undersigned, being the Municipal Officers of the Town of Eliot, pursuant to 30-A M.R.S.A. Section 3002, hereby certify the foregoing ordinance entitled "Shellfish Management Ordinance, Town of Eliot" as being the ordinance to be voted on, June 14, 2005.

Stephen R. Beckert, Chairman  
Roland R. Fernald  
Ann M. Shapleigh/Shisler  
John R. Grove  
Sharon Kibat  
**(Signed)**  
Eliot Board of Selectmen